

NO. _____

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	
	§	CAMERON COUNTY, TEXAS
MARTHA B. URESTI, d/b/a	§	
Uresti Immigration/Notary Services,	§	
Defendant	§	
	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of MARTHA B. URESTI, doing business as Uresti Immigration/Notary Services, hereinafter referred to as Defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against Defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (Vernon 1987 and Supp. 2004) (hereinafter “DTPA”). The DTPA grants

authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM CODE ANN. § 17.47.

DEFENDANT

3. Defendant MARTHA B. URESTI is an individual doing business as Uresti Immigration/Notary Services, regularly conducts business in Cameron County, Texas, and may be served with process by serving her at her place of business at 4215 Southmost Road, Suite B, Brownsville, Cameron County, Texas.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

VENUE

5. Venue of this suit lies in Cameron County, Texas, for the following reasons:

- a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1) (Vernon Supp. 2004), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
- b. Under DTPA § 17.47(b), venue is proper because Defendant has done business in the county of suit.

PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that Defendant has, by means of these unlawful acts and practices, caused damage to and acquired money or

property from persons, and that Defendant adversely affect the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this petition it is alleged that Defendant did any act, it is meant that Defendant performed or participated in the act, or that the officers, agents or employees of Defendant performed or participated in the act on behalf of and under the authority of Defendant.

NOTICE BEFORE SUIT NOT GIVEN

9. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin Defendant from continued violations of the DTPA. If Defendant is not immediately restrained, she will continue to engage in the unauthorized practice of law and thereby cause immediate and irreparable injury, loss, or damage to persons who receive her services. Namely, the provision of legal services and/or advice by Defendant, a non-attorney, will have dire legal consequences and prejudice the legal rights of persons seeking benefits under U.S. immigration laws. Specifically, Defendant will continue to solicit customers each day and will continue to give legal services and/or advice to her customers when she is not licensed to practice law in the State of Texas. Defendant’s customers will lose

immigration benefits to which they are otherwise entitled and subject them to apprehension, detention or immediate deportation, or expose them to criminal liability as a result of her unqualified legal services and/or advice in immigration matters. As such, the Consumer Protection Division filed this lawsuit without notice to the Defendant, as authorized by § 17.47(a) of the DTPA.

NATURE OF DEFENDANT’S OPERATION

10. Defendant Martha B. Uresti owns and operates a business that purports to provide immigration services to persons who purchase her services.

SPECIFIC FACTUAL ALLEGATIONS

11. Defendant Martha B. Uresti (hereafter “Defendant”) has been engaged in the business of providing immigration services to those persons who purchase her services (hereafter “customers”). During all relevant times, Defendant was a notary public, held herself out to the public as provider of immigration services and solicited customers by representing that she has the skill or knowledge necessary to handle immigration cases and/or problems. Defendant advertised her immigration services by posting a sign in front of her place of business and distributing business cards. Defendant conducts business in Cameron County, Texas, and uses the name “Uresti Immigration/Notary Services” to conduct business.

12. Defendant’s customers are persons who sought to obtain immigration visas, permanent residency and/or authorization to work in the United States (hereafter referred to collectively as “immigration benefits”) for themselves or their relatives. The immigration service performed by Defendant for her customers include the following activities:

- a. interviewing customers to determine eligibility for immigration benefits under U.S. immigration laws;
- b. advising customers as to whether or not to file a petition or application under U.S. immigration laws to secure an immigration benefit for the customer or a relative of the customer;
- c. selecting and preparing a petition or application and other forms on behalf of customers, including but not limited to, form I-129 (Petition for a Nonimmigrant Worker), form I-765 (Application for Employment Authorization Document), form I-131 (Application for Travel Document), and form I-539 (Application to Extend/Change Nonimmigrant Status), which were filed with the Immigration and Naturalization Service¹ in order to obtain an immigration benefit; and
- d. gathering and storing the documentation supporting a customer's petition and/or application for immigration benefits under U.S. immigration laws.

13. Defendant agreed to perform the immigration service described above in exchange for compensation and did in fact accept compensation, sometimes in excess of \$1000, from her customers for the performance of the immigration service described above.

14. Defendant is not now or has ever been an attorney at law duly licensed by the State of Texas to engage in acts, practices and/or conduct which constitute the practice of law. In addition,

¹ The Immigration and Naturalization Service has been recently reorganized under the U.S. Department of Homeland Security and its service component has been renamed "Bureau of Citizenship & Immigration Services."

Defendant is not now or has ever been a recognized organization or accredited representative by the Board of Immigration Appeals as able to represent individuals in immigration matters or in proceedings before the immigration courts.

15. The activities of Defendant, as alleged in paragraph 12 above, constitute the unauthorized practice of law. See *Unauthorized Practice Committee v. Cortez*, 692 S.W.2d 47 (Tex. 1985).

NOTARY PUBLIC LAW VIOLATIONS

16. Defendant, as alleged above, has in the course of trade and commerce violated Chapter 406 of the Texas Government Code, TEX. GOV'T CODE ANN. § 406.001, *et seq.* (herein referred to as "Notary Public Law") as follows:

- a. By soliciting or accepting compensation to prepare documents for another in an administrative proceeding relating to immigration to the United States, Defendant, a notary public, is in violation of TEX. GOV'T CODE ANN. § 406.017(a)(2); and
- b. By soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States, Defendant, a notary public, is in violation of TEX. GOV'T CODE ANN. § 406.017(a)(3).

DTPA VIOLATIONS

17. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

- a. By advertising, offering for sale, selling, or providing a service that constitutes the unauthorized practice of law, Defendant is engaging in or has engaged in an act or practice

that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;

b. By representing that she has the skill or knowledge necessary to handle immigration cases and/or problems, Defendant is representing, by implication, that she has the status of a licensed attorney, which she does not, in violation of §17.46(b)(5) of the DTPA;

c. By agreeing to perform a service which constitutes the unauthorized practice of law, Defendant is representing that her agreement with customers confers or involves an obligation which is prohibited by law, in violation of §17.46(b)(12) of the DTPA; and

d. By violating Section 406.017 of TEX. GOV'T CODE ANN., Defendant is in violation of the DTPA. Section 406.017(f) of the Notary Public Law provides that failure to comply with Section 406.017 of the Act is a deceptive trade practice and is actionable under the DTPA.

EQUITABLE RESCISSION

18. All agreements between Defendant and her customers should be subject to the equitable remedy of rescission.

DISGORGEMENT

19. All of Defendant's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains, benefits or profits. Defendant should be ordered to disgorge all monies secured by deception, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

CONSTRUCTIVE TRUST

20. A constructive trust should be placed upon all of Defendant's assets in favor of all consumers victimized by Defendant and in favor of the State of Texas until this Court determines the appropriate amount of restitution and disgorgement.

INJURY TO CONSUMERS

21. Defendant has, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

22. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause damage to the general public.

APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER

23. It is essential that the Court immediately and temporarily restrain Defendant from continuing with the conduct described in this petition, namely the unauthorized practice of law. It is essential that the Court act immediately, prior to notice on Defendant and a hearing on the matter, because Defendant will continue to engage in the unauthorized practice of law and thereby cause immediate and irreparable injury, loss, or damage to persons who receive her services. Namely, the provision of legal services and/or advice by Defendant, a non-attorney, will have dire legal consequences and prejudice the legal rights of persons seeking benefits under U.S. immigration laws. Specifically, Defendant will continue to solicit customers each day and will continue to give legal services and/or

advice to her customers when she is not licensed to practice law in the State of Texas. Defendant's customers will lose immigration benefits to which they are otherwise entitled and subject them to apprehension, detention or immediate deportation, or expose them to criminal liability as a result of her unqualified legal services and/or advice in immigration matters.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

24. Plaintiff, STATE OF TEXAS, requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction hearing and prior to Defendant's answer date. There are a number of witnesses whom may need to be deposed prior to any scheduled Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shorted notice to Defendant and her attorney, if known.

PRAYER

25. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, her officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging, directly or indirectly, in the following acts or practices:

- a. Operating a business or conducting business at 4215 Southmost Road, Suite B, Brownsville, Cameron County, Texas;
- b. Advertising, offering for sale, selling, or performing an immigration service;

- c. Advertising, offering for sale, selling, or performing a notarial service;
- d. Accepting money or valuable consideration for performing a notarial or an immigration service;
- e. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under U.S. immigration laws for himself or any other person;
- f. Advising any person whether or not to file a petition, application, or other form to obtain a benefit under U.S. immigration laws for himself or any other person;
- g. Preparing for any person a petition, application or other form to obtain a benefit under U.S. immigration laws for himself or any other person;
- h. Holding herself or a business out, by any means, to the public by any title or designation incorporating the word “immigration” or an abbreviation thereof;
- i. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration matters;
- j. Representing, directly or by implication, that Defendant can get legal status, a work permit, or other benefit under U.S. immigration laws for a person who purchases her services;
- k. Showing, directly or by implication, any affiliation, connection, or association of an address or telephone number in the United States with an immigration service in Mexico;
- l. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendant currently or hereafter in Defendant’s

possession, custody or control except in response to further orders or subpoenas in this cause;
and

m. Representing, directly or by implication, that this Court, the Bureau of Citizenship & Immigration Services (also known as the Immigration and Naturalization Service), or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendant, or approved of any of Defendant's business practices.

26. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date, with reasonable shortened notice to Defendant and her attorney, if known.

27. In addition, Plaintiff, STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in the amount of \$20,000 per violation of the DTPA;
- b. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;
- c. Adjudge against Defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006 (Vernon 1998);
- d. Adjudge against Defendant prejudgment and postjudgment interest at the highest lawful rate;

- e. Order disgorgement of all monies taken by Defendant as a result of her unauthorized practice of law;
- f. Rescind all fee agreements entered into by and between Defendant and her customers; and
- g. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

Further, Plaintiff, STATE OF TEXAS, respectfully prays this Court for all other relief to which Plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

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VERIFICATION

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the ____ day of _____, 2004.

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS